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January 8, 2001

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, N.W., TW-A325
Washington, DC 20554

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JAN - 8 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: Supplemental Comments of McLeodUSA Telecommunications Services, Inc.

Dear Ms. Salas:

Enclosed for filing please find an original and two copies of the Supplemental Comments in CC Docket 00-217 of McLeodUSA Telecommunications Services, Inc. together with a "stamp copy." Please date stamp the copy and return to this firm via the courier delivering the pleading.

Thank you for your time and consideration.

Sincerely,

Emily M. Williams

Emily M. Williams

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JAN - 8 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
Joint Application by SBC Communications, Inc.,)
Southwestern Bell Telephone Company, and)
Southwestern Bell Communications Services, Inc.)
d/b/a Southwestern Bell Long Distance for)
Provision of In-Region, InterLATA Services in)
Kansas and Oklahoma)

CC Docket No. 00-217

**SUPPLEMENTAL COMMENTS OF
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.**

McLeodUSA, Telecommunications Services, Inc., ("McLeodUSA"), pursuant to Public Notices DA-00-2912 and DA-00-2917, released December 27, 2000, and December 28, 2000, respectively, submits these Supplemental Comments in response to the two ex parte filings made by Southwestern Bell in the above-captioned proceeding concerning the Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance ("SBC") for Provision of In-Region, InterLATA Services in Kansas and Oklahoma filed October 26, 2000 (the "Application").

This proceeding involves an application, pursuant to Section 271 of the Telecommunications Act of 1996, by SBC for authority to provide interLATA service in the states of Kansas and Oklahoma. In order for the Commission to grant such an application, the Commission must find that SBC has complied with a 14-point checklist of actions that SBC must take to open its local markets to competition. One of the primary issues in any such proceeding is whether the prices that the Bell Operating Company is charging for its unbundled network elements complies

with the Total Element Long Run Incremental Costs ("TELRIC") principles that have been adopted by the Commission.

In the *ex parte* filings that are the subject of these Supplemental Comments, SBC states that the rates that were submitted in its initial application in October comply with the TELRIC methodology, but that to allay the concerns that have been raised by CLECs and the DOJ, SBC has agreed to a voluntary reduction of some of the non-recurring rates in Kansas and some of the recurring and nonrecurring rates in Oklahoma. Very generally, the reductions in Kansas will be 25% less than the NRCs prescribed by the Kansas Corporation Commission in its November 3, 2000, *Order* or the rate established by the KCC in its *Order on Reconsideration*, which ever is lower, but in no event will the rate be lower than the rate in Texas. In Oklahoma reductions ordered by the Oklahoma Commission will be applied to additional NRCs and NRCs that have not already been ordered to be discounted will receive a 25 percent discount, as long as any discount is not to a level below the corresponding NRC in Texas.

McLeodUSA, believes that SBC has taken a step in the right direction in lowering its rates. However, the Commission should not allow an applicant to file a major amendment to its application at this late date. In addition, despite the lower rates substantial questions remain about whether the rates comply with TELRIC principles. Therefore, the Commission should not grant the application even with the lower rates.

I. SBC's FILING OF NEW RATES RESTARTS THE SECTION 271 90-DAY CLOCK

The 90-day review process makes it necessary to have as efficient a process as possible for such applications. The statutory time limitation puts a significant burden on the Commission and an Applicant should not be allowed to increase that burden two thirds of the way through the process. The rates reflected in the SBC *ex partes* are a substantial change to the application that was filed in October. The Commission repeatedly has stated that it expects a Section 271 application, as originally filed, to include all of the factual evidence on which the applicant would have the Commission rely in making its determination. The Commission should not permit SBC to disregard the procedural parameters set by the Commission for consideration of Section 271 applications by filing a substantial amendment at this time.

The Commission has stated that in the event that an applicant submits factual evidence that changes its application in a material respect, the Commission reserves the right to deem such submission a new application and start the 90-day review process anew. There is almost nothing that could change an application in a greater material respect than the submission of new UNE prices. Therefore, it is imperative that the Commission deny the initial application and "restart the clock" on this Section 271 application should SBC desire to continue to seek interLATA authority for Oklahoma and Kansas.

II. SBC's EX PARTE FILING DOES NOT DEMONSTRATE THAT ITS UNE RATES IN OKLAHOMA AND KANSAS COMPLY WITH TELRIC

SBC's *ex parte* filings do not include any new evidence or arguments as to why the initial or proposed rates comply with TELRIC principles. The *ex parte* letters simply state that the

initial rates were based upon TELRIC principles. Apparently, SBC believes that if the initial rates were based upon TELRIC methodology, any lower rates must also be based upon TELRIC methodology. SBC introduces no new evidence to show that in fact the procedures used by the state commissions or the cost information submitted by SBC ensured compliance with TELRIC methodologies. If the initial rates do not comply with TELRIC principles, a percentage reduction in those rates does nothing to ensure that the rates comply with those principles.

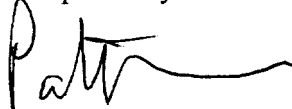
Moreover, many of the new rates continue to be substantially above the rates the Commission recently found to be TELRIC based in Texas. Even after application of the “discount” some of the rates in Oklahoma and Kansas are as much as 300-400 percent above the rates in Texas. For example, the NRC rates for loops in Kansas remain, after the discount, between 150 and 300 percent higher than the rates in Texas and the NRC rates in Oklahoma for loops remain, after the discount between 150 and 400 percent higher than in Texas. Likewise the NRCs for Dedicated Transport remain, in both Kansas and Oklahoma, after the discount, more than twice as much as the corresponding NRC in Texas. Such a difference is not explained by differences in the costs of providing a loop in Texas, Oklahoma and Kansas or by reasonable differences in methodology adopted by the state commissions.¹ Accordingly, there is no basis for a conclusion that the discounted rates are TELRIC-based.

¹ There is simply nothing in the record that would support such a large difference in the NRC rates. As Sprint noted in its Comments, “it does not appear that the usual reasons identified for disparities, such as terrain or population density, would account for the magnitude of difference in the rates. Nor does labor appear to be the determinative factor [as] Texas rates . . . exceed Kansas [and Oklahoma’s rates are only 8-15% higher than Texas].” Sprint Comments at 30-31 (filed November 15, 2000). The Reply Brief for SBC argued that the nonrecurring loop rates in Texas do not include installation and maintenance activities that were intended to be recovered via the Central Office Access Charge (“COAC”) and the Trip Charge. But the Texas Commission refused to allow

III. CONCLUSION

While McLeodUSA believes that SBC's reductions in its rates are a step in the right direction, there is simply nothing in the submission of these new rates upon which the Commission could conclude that SBC has complied with the requirements of Section 271, or specifically that the Kansas and Oklahoma rates comply with TELRIC principles. The *ex parte* submission is a simple reduction in rates rather than additional evidence or information that would show that the rates comply with TELRIC principles. The initial application should be denied and, if SBC wants to continue prosecution of its Section 271 applications for Kansas and Oklahoma, the Commission must restart the clock on the application.

Respectfully submitted,



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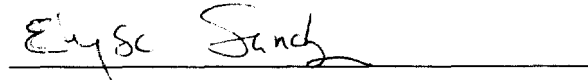
Counsel for McLeodUSA, Inc.

Dated: January 8, 2001

recovery of those charges so the fact that they were intended to be recovered is irrelevant to the issue of the reasonableness of the charges in Oklahoma and Kansas.

CERTIFICATE OF SERVICE

I, Elyse Sanchez, hereby certify that the foregoing Supplemental Comments of McLeodUSA Telecommunications Services, Inc. were filed this 8th day of January, 2001, and copies of same were sent via hand delivery and/or first class mail upon the following persons on the attached list:

A handwritten signature in cursive script that reads "Elyse Sanchez". The signature is written in black ink and is positioned above a solid horizontal line.

Elyse Sanchez

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